

Perhaps the success of the case method and the proliferation of decennial digests will largely account for the previous non-cultivation of a great many phases of our American legal history.⁸ It is, nevertheless, the hope of this reviewer that, with Professor Hamilton's work as an example and as one more published volume of source material useful in training American legal historians, the present unsatisfactory situation will some day be ameliorated.⁹

WILLIAM B. JEFFREY, JR.†

TAXATION IN THE UNITED STATES. By Randolph E. Paul. Boston: Little, Brown and Company. 1954. Pp. 830. \$15.00.

THE appearance of this book in this, the year of the great revision, is in a sense a most interesting coincidence. The enactment of the latest edition of the Internal Revenue Code comes at the close of four decades of experience with the modern federal income tax. *Taxation in the United States* is for the greatest part a political and legislative history of the federal tax system during these forty years. It is the story of a legal system forced to grow with hothouse rapidity.

There is probably no one in this country so well equipped to write this book as Randolph Paul. He comes to this task prepared by a long and highly successful career as a tax practitioner, by a scholarly interest in his subject, and by a notable experience as an adviser to the Federal government on matters of taxation and public finance. Paul's career provides striking proof of his own oft-repeated thesis that the public activities of a tax expert need not always reflect the financial interests of his wealthier clients if his private practice is to prosper.¹

Mr. Paul's approach to the history of the federal tax system, and more particularly of the federal income tax, is that of a liberal, although he is never doctrinaire. His manner of presentation follows that of previous works of this type.² The general history of the last forty years is sketched in some detail so that the development of the federal tax system appears in the context of the

the emphasis upon the unusual, the danger of inaccurate generalizations upon insufficient data, etc.—militate conclusively against its adoption. A sufficient answer can be found in the magnificent 70-volume series of the Selden Society's publications. Professor Richard B. Morris, for the Littleton-Griswold Fund of the American Historical Association, has offered a program of publication. Morris, *Early American Court Records: A Publication Program*, 18 N.Y.U.L.Q. REV. 213 (1941).

8. The extent of this "non-cultivation" is, perhaps, more apparent than real. A very considerable body of legal history has been published in the legal and historical periodicals, but the problem of access via index subject headings is a difficult one.

9. See Boorstin, *Tradition and Method in Legal History*, 54 HARV. L. REV. 424 (1941) and *The Humane Study of Law*, 57 YALE L.J. 960 (1948).

† Assistant Law Librarian, Yale Law School.

1. P. 771-4; Paul, *The Lawyer as Tax Adviser*, 25 ROCKY MT. L. REV. 412, 433-4 (1953); Paul, *The Responsibilities of the Tax Adviser*, 63 HARV. L. REV. 377, 386-8 (1950).

2. BLAKEY & BLAKEY, *THE FEDERAL INCOME TAX* (1940); RATNER, *AMERICAN TAXATION, ITS HISTORY AS A SOCIAL FORCE IN DEMOCRACY* (1942).

events which conditioned its growth. A very extensive picture of the executive and legislative action which preceded the enactment of each major revenue measure and contemporary public reaction to these measures is drawn. If it had no other virtue, this material at least brings home quite dramatically the fact that neither rationalization,³ epithet,⁴ nor rhetoric⁵ change very much from decade to decade when taxation is the subject of discourse.

The historical material in the book is thorough and it is interspersed from point to point with worthwhile discussion of various tax measures. But thoroughness is carried to an extreme. The book's pages contain a good deal of trivia; there is needless repetition; and there is a tendency to resort to rather extensive technical descriptions of legislation which could be adequately summarized in fewer words.⁶ All this tends to narcotize the reader so that more significant provisions and changes begin to slide by unnoticed.

Having brought American tax history down to 1951, and thus having told practically all that is of importance prior to 1954, Paul turns to more general considerations about our federal tax system. He explores the role of the courts and the Treasury in the taxing process, appraises the present tax system, and discusses the role of taxation in the economy of the nation. The history of progressive taxation and its theory are outlined. The theoretical discussion owes much to the Messrs. Blum and Kalven,⁷ a debt which is acknowledged by the author. This portion of the book is well written, thorough and interesting, but it does not produce any startlingly new insights into the federal tax system. One also wishes that Paul had subjected some of the arguments made by Blum and Kalven to more critical analysis before presenting them in his own book.

An appraisal of the tax structure by one of Paul's experience is always worthy of attention. He finds some areas which displease him, but his final evaluation

3. *Compare* 1894: "[The income tax] was called a tax upon thrift and a penalty upon success; it was accused of taking 'from the wealth of the thrifty and enterprising,' and giving 'to the shiftless and the sluggard,'" (p. 35) *with* a recent statement of the Economic Principles Commission of the National Association of Manufacturers: "through progressive income tax the government more or less deliberately 'deprives its successful citizens of their product and gives it to the less successful; thus it penalizes industry, thrift, competence and efficiency and subsidizes the idle, spendthrift incompetent and inefficient'" (p. 751-2).

4. *Compare* 1894: "Opponents of the income tax called it a . . . Populistic and Socialistic Labor Measure, and made lurid references to the 'specters of anarchy and communism,'" (p. 35) *with* 1954: "The Second Reed-Dirksen Amendment does not limit the amount of Revenue Congress may raise, but merely eliminates in large measure from our system of taxation its communistic or socialistic features . . ." Dresser, *The Reed-Dirksen Amendment: A Reply to Professor Cary*, 40 A.B.A.J. 35, 36 (1954).

5. *Compare* 1951: "The fact that the split income provision was available . . . to every husband and wife made it, in Senator Humphrey's view, 'something like the equality of which Anatole France spoke, when he said that the rich and poor alike can sleep under a bridge,'" (p. 612) *with* 1954: "Mr. Douglas. Does the Senator from Oklahoma remember the statement of Anatole France about . . . the majestic equality of the law which forbade the rich as well as the poor from sleeping under bridges . . ." 100 CONG. REC. 8827 (1954).

6. See, *e.g.*, pp. 627-9.

7. BLUM & KALVEN, *THE UNEASY CASE FOR PROGRESSIVE TAXATION* (1953).

is that of a pragmatist: "The best compliment one can pay our tax system is to say that it works."⁸ It has collected a sufficiency of revenue without undue distortion of the economy, has distributed the burden of the cost of government in a manner which is basically reasonable, and has helped provide a measure of stability in our economic system. In short, what we have done and what we are doing in taxation is fairly satisfactory. History, however, should do more. It should help us to see where we are headed and, possibly, allow us to avoid future pitfalls. From this viewpoint one feels compelled to add a reservation to Paul's appraisal of the federal tax mechanism.

There is, even at present, a very great disparity between the real and the apparent rates of taxation imposed by the principal source of federal revenue, the individual income tax.⁹ In large part this divergence is due to the various tax preferences which form part of the present federal tax structure. Capital gains, percentage depletion, and the tax-free status of income from the securities of state and local governments are probably the most significant sources of the differences between real and apparent rates. Congress has shown a consistent and disturbing tendency to expand the scope of applicability and the benefits from two of the most important of these preferences, capital gains¹⁰ and percentage depletion.¹¹ This tendency is disturbing because it eats away at the element of progression in the federal tax structure.

More significant in the long run is the fact that the expansion of these tax preferences makes it increasingly difficult for the American public and the Congress to formulate an accurate idea of the level of taxation actually borne by taxpayers in various income groups in our society. There is a very substantial disparity between the taxes these groups pay and the citizen's conception of what they pay—the latter being in most cases derived from a vague remembrance of the *bracket* rates stated on the income tax form. This divergence

8. P. 685.

9. The average effective rate of taxation applicable to individuals having adjusted gross incomes in excess of \$5,000,000 in 1948 did not exceed fifty-eight percent, if net capital gains are included in computing gross income. If interest on tax-free securities and percentage depletion are also taken into consideration the average rate of tax paid by these taxpayers must have been a good deal less than fifty-eight percent. The theoretical effective rate for a married couple in 1948 ranged from fifty percent for an adjusted gross income of approximately \$200,000 to a maximum of seventy-seven percent for adjusted gross incomes in excess of \$1,000,000. In actuality, taxpayers whose adjusted gross income, including capital gains, was between \$200,000 and \$5,000,000 paid an average rate of tax in this year which never exceeded forty-eight percent. BUTTERS, THOMPSON, & BOLLINGER, *EFFECTS OF TAXATION—INVESTMENTS BY INDIVIDUALS* 78-89 (1953).

10. Since 1949, capital gains treatment has, with certain limitations, been extended to stock options, coal royalties, breeding livestock, unharvested crops sold with a farm, patent royalties, and the cancellation of leases and distributors' agreements.

11. There may be some cause for hope here. Percentage depletion is not yet allowed on salt water. INT. REV. CODE OF 1954 § 613(b)(6)(B). However, producers of common salt are now entitled to percentage depletion at the rate of fifteen percent. Salt extracted from sea water is competitive with mined salt. Are we not putting producers of salt from sea water at a competitive disadvantage with other producers of salt?

expands as the areas of tax preference expand, steadily eroding the ability of both the electorate and Congress to deal intelligently with the nation's tax structure. Adequate remedies for problems of this kind are not easy to find. Providing the public with better information about the federal tax structure and in particular with more precise information as to who bears what part of the federal tax burden might, of course, help.

Taxation in the United States will undoubtedly find its widest market among students of taxation, and it has what may seem to some of them a serious inadequacy. The volume obviously represents the end result of a great deal of research, and yet the reader is given the benefit of references to only a limited number of Paul's sources. One can only hope that this shortcoming will be remedied in a future edition.

Taken with these reservations, Paul has produced what is probably the best available general historical and descriptive work on the federal tax system. It deserves a place in the library of any serious student of American taxation and on the reading list of the practicing tax lawyer.

ARTHUR A. FEDER†

†Member, New York Bar.



ARTHUR LINTON CORBIN

The Editors take pleasure in dedicating this issue of the JOURNAL
to Arthur Linton Corbin, Professor of Law, Emeritus,
on the occasion of his eightieth birthday.